

# BOYCE, MURPHY, McDOWELL & GREENFIELD

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Of Counsel  
John R. McDowell

J.W. Boyce (1884-1915)  
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January 17, 1995

Re: Request for Ethics Opinion 94-20

Dear

You have requested an opinion from this Committee based upon the following facts:

## FACTS

You are a licensed resident South Dakota attorney and a member of the South Dakota State Bar Association. You are also a licensed resident South Dakota insurance agent. It is your desire to devote your efforts to both occupations. You wish to form a limited liability company for the practice of law in accordance with SDCL 47-13A-1 and related statutes. You indicate that the L.L.C. will have at least one client, an insurance agency, which will pay you a retainer for legal services. You also wish to sell insurance as a licensed insurance agent through this insurance agency. You also want to provide legal advice and services to this insurance agency and its insurance clients. You also want to perform risk control services (providing assessments, techniques and ideas to reduce worker's compensation claim frequency and severity) for a separate limited liability company.

Based upon the above facts you have asked this Committee the following questions:

1. Can you operate a legal L.L.C. and still provide service to the insurance agency as an insurance agent and to the other L.L.C. as a risk control consultant. Your question focuses on whether or not you would still be "actively engaged in the practice

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of law in the offices of the corporation" under SDCL 47-13A-2(4) if you split your time between the three entities?

2. How you can best avoid potential problems when insurance clients know you are also an attorney.

3. Do you have any potential conflict of interest problems when you split your time between the three entities.

4. Once you have sold insurance to an insurance client through the insurance agency, can you then provide the insurance client with legal advice in relation to their insurance coverage.

#### OPINION

This Committee will address each of your questions in the order presented.

1. To answer your first question would require this Committee to opine on a question of law outside of the South Dakota Rules of Professional Conduct. This Committee has no authority or jurisdiction to render opinions on questions of law outside of the Rules of Professional Conduct and, accordingly, respectfully declines to answer your first question.

2. It is the opinion of this Committee that the best means to avoid potential problems in the above-described scenario is simply to not split your time between the three entities. It is this Committee's opinion that no matter how careful you may be under this type of arrangement, ethical problems and conflicts will arise. Accordingly, this Committee simply believes that the best way to avoid these problems is simply not to undertake so many different roles.

3. It goes without saying that you would have conflict of interest problems when you split your time between the three entities and perform different roles for different entities at different times. Your question is so broad that this Committee is unable to be any more specific.

4. It is the opinion of this Committee that under Rule 1.7, once you have sold insurance to an insurance client in your capacity as an insurance agent through the insurance agency, you cannot then provide the insurance client with legal advice in relation to their insurance coverage while acting as an attorney. The basis for this opinion is that under Rule 1.7 your representation of the insurance client pertaining to insurance coverage issues would be adversely affected by your relationship with the insurance agency and your own interests as an insurance agent. There is simply no way that it could be reasonably believed that

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your other roles and obligations would not adversely affect your representation of the insurance client.

Thank you.

Sincerely,

Michael S. McKnight, Chairman  
Ethics Committee